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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/722,579	11/26/2003	Mitchell Clark Voges	38213.00011.CIP1	5674

23562 7590 06/08/2005

BAKER & MCKENZIE
PATENT DEPARTMENT
2001 ROSS AVENUE
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EXAMINER

BLAU, STEPHEN LUTHER

ART UNIT	PAPER NUMBER
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3711

DATE MAILED: 06/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	10/722,579	VOGES ET AL	
	Examiner	Art Unit	
	Stephen L. Blau	3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 26-58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 26-58 is/are rejected.
- 7) ☒ Claim(s) 50 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 February 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>5/2/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. The change to claim 8 is agreed with and the objection is removed.
2. Claim 50 is objected to because of the following informalities: The word "tan" does not make sense. Appropriate correction is required.

Drawings

3. Figures 7, and 12-13 submitted 14 February 2005 are approved. Figures 8-11 submitted 14 February 2005 are not approved because these figures are blurred and the examiner is unable to determine where the reference lines are pointing. Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be

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necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 48-52 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. In claim 48 it states combining swing information and swing data to generate a baseline matrix that can be used to determine fit the golfer's swing technique needs modification. It is uncertain how one skilled is to make this baseline matrix. The specification does not disclose how this is done. In addition, the words "used to determine fit the golfer's swing technique needs modification" does not make sense.

Claim Rejections - 35 USC § 112

6. The change to claim 40 is agreed with and the rejection under 35 U.S.C. 112, second paragraph, is removed.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 6 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hammond in view of Antonious (5,916,041).

Hammond discloses a method and a system comprising receiving swing data over a wireless communications link (Fig. 1), using swing data to derive swing parameters (Col. 2, Lns. 43-47) a strain gauge sensing shaft deflection coupled to a transmitter (Col. 2, Lns. 50-55), a display (Ref. No. 44), a method of using this swing data to fit a golfer with golf equipment (Col. 4, Lns. 6-10), using a shaft module in the form of a computer (Ref. No. 38), a swing data collection system in the form of a memory (Ref. No. 34), and a strain gauge and wireless transmitter comprise a single device in the form of a plurality of wireless transmitters each coupled with to one of a

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plurality of strain gauges and each transmitter transmitting different frequencies (Col. 2, Lns. 50-60).

Hammond lacks determining swing information related to a golfer's current swing, combining swing information with swing data to derive swing parameters for use in fitting a golfer with equipment, and swing information being related to the courses and conditions the golfer normally encounters. Antonious discloses the selection of golf equipment in the form of the type of head being dependent on conditions encountered on a golf course in order to optimize energy transfer from a head to a ball (Col. 6, Lns. 19-27). In view of Antonious it would have been obvious to modify the method of fitting a golfer with equipment of Hammond with the steps of determining swing information related to a golfer's current swing, combining swing information with swing data to derive swing parameters for use in fitting a golfer with equipment, and swing information being related to the courses and conditions the golfer normally encounters in order to have equipment including heads which optimize energy transfer from a head to a ball for courses and conditions a player plays in.

9. Claims 1-8, 45-46, 48 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hammond in view of Naruo.

Hammond lacks determining swing information related to a golfer's current swing, combining swing information, launch information and swing data to derive swing parameters for use in fitting a golfer with equipment (shaft), swing information being related to a golfer's swing technique, a load time, a load pattern, a ramp potential and

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peak deflection from strain data, a graph display, a video taping a golfer's swing, generating a baseline matrix that can be used to fit the golfer's needs, and receiving launch information.

Naruo discloses strain data displayed showing a load time, a load pattern, a ramp potential and peak deflection (Fig. 25), a graph display (Fig. 25), using strain gauges on a shaft in order to detect deflection during a swing (Col. 3, Lns. 7-11), swing information being related to a golfer's swing technique (swing time), a video taping a golfer's swing (Col. 2, Lns. 28-41), receiving launch information in the form of launch time (impact time) (Fig. 25, Col. 2, Lns. 28-41) and based on the swing parameters select an optimum flex for a shaft based on the deflection (Col. 2, Lns. 28-41, Col. 3, Lns. 4-6). Naruo does not specifically disclose a generating a baseline matrix but clearly an artisan skilled in the art of using all this data would have selected a suitable means for recording the data and reading it for use in which a baseline matrix is included. In view of the patent of Naruo it would have been obvious to modify the method and system of Hammond to include determining swing information related to a golfer's current swing, combining swing information, launch information and swing data to derive swing parameters for use in fitting a golfer with equipment, swing information being related to a golfer's swing technique, a load time, a load pattern, a ramp potential and peak deflection from strain data, a graph display, a video taping a golfer's swing and receive launch information in order to provide an optimum flex for a shaft to a golfer based on deflection of a shaft.

In view of the patent of Naruo it would have been obvious to modify the method and system of Hammond to include a step of generating a baseline matrix that can be used to fit the golfer's needs in order to have a format which a fitter can easily read the data from in fitting a golfer with golf equipment.

10. Claims 1, 6 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hammond in view of Nauck.

Hammond lacks determining swing information related to a golfer's current swing, combining swing information with swing data to derive swing parameters for use in fitting a golfer with equipment, and swing information being related to what equipment a golfer uses.

Nauck discloses custom fitting clubs to golfer through evaluating the result of combined equipment and golfer's characteristics in a dynamic evaluation (Col. 4, Lns. 51-55) in order to prevent equipment from having little positive effect for a golfer (Col. 4, Lns. 30-51). In view of the patent of Nauck it would have been obvious to modify the method of fitting a golfer with equipment of Hammond with the steps of determining swing information related to a golfer's current swing, combining swing information with swing data to derive swing parameters for use in fitting a golfer with equipment, and swing information being related to what equipment a golfer uses in order to ensure the equipment will having a positive effect for a golfer.

11. Claims 1, 6, 42, and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hammond in view of Sayers.

Hammond lacks determining swing information related to a golfer's current swing, combining swing information with swing data to derive swing parameters for use in fitting a golfer with equipment, and swing information being related to a golfer's strengths, weaknesses, and swing technique.

Sayers discloses custom fitting clubs to golfer by fitting a player with a personal timing, coordination and physical strength to his equipment in order to optimize a player's game (Col. 1, 18-26). In view of the patent of Sayers it would have been obvious to modify the method of fitting a golfer with equipment of Hammond with the steps of determining swing information related to a golfer's current swing, combining swing information with swing data to derive swing parameters for use in fitting a golfer with equipment, and swing information being related to a golfer's strengths, weaknesses, and swing technique in order to optimize a player's game.

12. Claims 1, 6, and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hammond in view of Mann.

Hammond lacks determining swing information related to a golfer's current swing, combining swing information with swing data to derive swing parameters for use in fitting a golfer with equipment, and swing information being related to the level of competition encountered.

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Mann discloses custom fitting clubs to golfer based on the level of competition encountered in the form of professionals should have heavy shafts (Col. 5, Lns. 18-20). In view of the patent of Mann it would have been obvious to modify the method of fitting a golfer with equipment of Hammond with the steps of determining swing information related to a golfer's current swing, combining swing information with swing data to derive swing parameters for use in fitting a golfer with equipment, and swing information being related to the level of competition encountered in order to be able hit as far as the competition.

13. Claim 47 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hammond in view of Sayers as applied to claims 1, 6, 42, and 45 above, and further in view of Cervantes.

Hammond lacks a step of identifying swing flaws related to the golfer's swing technique and correcting swing flaws prior to evaluating a golfer's current clubs or receiving swing data.

Cervantes discloses a method of evaluating a specific golfer's swing performance and adjusting to correct swing flaws (Col. 1, Lns. 27-34). In view of the patent of Cervantes it would have been obvious to modify the method of fitting a golfer with equipment of Hammond with the step of identifying swing flaws related to the golfer's swing technique and correcting swing flaws prior to evaluating a golfer's current clubs or receiving swing data in order to have meaningful swing data.

14. Claim 49 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hammond in view of Naruo as applied to claims 1-8, 45-46, 48 and 50 above, and further in view of Cervantes.

Hammond lacks a step of providing swing instructions when it is determined a golfer's swing technique needs modification.

Cervantes discloses a method of evaluating a specific golfer's swing performance and adjusting to correct swing flaws (Col. 1, Lns. 27-34). In view of the patent of Cervantes it would have been obvious to modify the method of fitting a golfer with equipment of Hammond with the step of providing swing instructions when it is determined a golfer's swing technique needs modification in order to have meaningful swing data during the data collection process.

15. Claims 51-52 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hammond in view of Naruo as applied to claims 1-8, 45-46, 48 and 50 above, and further in view of Gobush.

Hammond lacks a step of receiving launch information related to a golfer's swing and combining the swing information and swing date with the launch information in order to select an optimal ball and head.

Gobush discloses a method of receiving launch information in the form of launch angle and spin rate and checking for gaps between clubs in order to fit golf equipment to a golfer in order to optimize equipment for a golfer (Col. 18, Lns. 19-33, Col. 19, Lns. 1-50). In view of Gobush it would have been obvious to modify the method of fitting a

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golfer with equipment of Hammond with the step of receiving launch information related to a golfer's swing and combining the swing information and swing date with the launch information in order to optimize a ball and a head for a golfer so that the entire club (i.e. shaft, head) and ball are optimized for playing a round of golf.

16. Claim 26-32, 35, 37-38 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hammond in view of Naruo and Examiner's Official Notice.

Hammond discloses transmitters secured to a shaft (Fig. 1) and a plurality of wireless transmitters each coupled with to one of a plurality of strain gauges and each transmitter transmitting different frequencies (Col. 2, Lns. 50-60).

Hammond lacks a system with a high speed color camera to obtain launch information.

Naruo discloses using a high speed color camera to obtain launch information (Abstract, Col. 4, Lns. 21-68). In view of the patent of Naruo it would have been obvious to modify the system of Hammond to include a high speed camera in order to have more exact information to evaluate with in fitting equipment to a golfer.

The examiner takes Official Notice that it is well known to have cameras which record in color.

17. Claims 33-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hammond in view of Naruo and Examiner's Official Notice as applied to claim 26-32, 35, 37-38 and 40 above, and further in view of Kawaguchi.

Hammond lacks strain gauges configured to sense the lead or lag deflection of a shaft, and tow up or down deflections for a shaft.

Kawaguchi discloses strain gauges configured to sense the lead or lag deflection (Fig. 3) and tow up or down deflections for a shaft (Fig. 4) in order to provide a shaft most suited for a golfer (Col. 1, Lns. 35-46). In view of the patent of Kawaguchi it would have been obvious to modify the method and fitting system of Hammond to have strain gauges configured to sense the lead or lag deflection and tow up or down deflections for a shaft in order to provide a shaft most suited for a golfer.

18. Claims 36 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hammond in view of Naruo and Examiner's Official Notice as applied to claim 26-32, 35, 37-38 and 40 above, and further in view of Evans.

Hammond lacks a strap configured to secure a wireless transmitter and one transmitter. Evans discloses a strap used to secure a transmitter attached to a wrist (Fig. 1) and one transmitter (Abstract). In view of the patent of Evans it would have been obvious to modify the club of Hammond to have transmitters secured to a shaft by straps in order to use a securing mechanism used in the art for transmitters. In view of the patent of Evans it would have been obvious to modify the club of Hammond to have one transmitter in order to minimize the number of components needed for the swing data collection system.

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19. Claims 53-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hammond in view of Naruo and Examiner's Official Notice as applied to claim 26-32, 35, 37-38 and 40 above, and further in view of Gobush.

Hammond lacks launch information related to launch speed, launch angle, spin rate, back spin, side spin and rifle speed of a ball as it is launched. Gobush discloses a system to collect launch speed, launch angle, spin rate, back spin, and side spin of a ball as it is launched and checking for gaps between clubs in order to optimize equipment for a golfer (Col. 18, Lns. 19-33, Col. 19, Lns. 1-50). Gobush does not specifically disclose receiving rifle spin but collecting back spin and side spin together is rifle spin. In view of Gobush it would have been obvious to modify the system for fitting a golfer with equipment of Hammond with a system to collect launch speed, launch angle, spin rate, back spin, side spin, and rifle spin of a ball as it is launched in order to optimize a ball and a head for a golfer so that the entire club (i.e. shaft, head) and ball are optimized for playing a round of golf.

Response to Arguments

20. The argument that Naruo does not disclose determining swing information related to a golfer's current swing and combining the swing information with swing data is disagreed with. Naruo discloses collecting swing data from strain gages as well as determining swing information from the use of cameras. It would be obvious to add cameras to the system of Hammond for the same reasons. The argument that Naruo is

improper due to Naruo not disclosing launch data collection is disagreed with. Naruo discloses collecting launch time and velocity with a high speed camera and using the information along with strain data. Clearly launch time and velocity are launch data.

21. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Conclusion

22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steve Blau whose telephone number is (571) 272-4406. The examiner is available Monday through Friday from 8 a.m. to 4:30 p.m.. If the

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examiner is unavailable you can contact his supervisor Greg Vidovich whose telephone number is (571) 272-4415. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0858. (TC 3700 Official Fax 703-872-9306)

slb/ 7 June 2005


STEPHEN BLAU
PRIMARY EXAMINER